IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY NINETH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 8735 of 2004

Between:

K. Surya Rao S/o. Krishnaiah, R/o Vella Village,
Ramachandrapuram Mandal, East Godavari District.

..... PETITIONER

AND

1 The Land Acquisition Officer-cum-Dist. Collector, East Godavari District.
2 The Commissioner, Endowments, Tilak Road, Hyderabad.
3 The Asst. Commissioner, Endowoments-cum-Executive Officer,
Sri M.S. Naicker Charities, Jagannaickpur,
Kakinada, EAst Godavari District.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to writ, order or Direction more particularly one in the nature of Writ of mandamus, declaring the 4 (1) Notification dated 22.11.2003 and also 6 Declaration dated 27.02.2004 as illegal, unconstitutional and contrary to the provisions of the Land Acquisition Act, 1923 and consequently set aside the same.

For the Petitioner: MR. S.V.BHATT, Advocate

For the Respondents: GP FOR LAND ACQUISITION

The Court at the admission stage made the following :

ORDER:

The petitioner, by this writ petition, seeks to declare the Notification dated 22-11-2003 issued under Section 4(1) of the Land Acquisition Act, 1923 (for short "the Act") and also the Notification dated 27-02-2004 issued under Section 6 of the Act by the first respondent, as illegal, unconstitutional and contrary to the provisions of the Act.

The petitioner claims to be in possession of the land belonging to Sri Malladi Satyalinga Naikar Charities (M.S.N. Charities), Kakinada, East Godavari District in an extent of Ac.10-00 situated in survey Nos.275/1, 276/1, 277/1 and 277/2A of Vella village, Ramachandrapuram Mandal of East Godavari District, which was leased out to him in the year 2001 till 2004-2005. While so, on 22-11-2003 the first respondent issued Notification under Section 4(1) of the Act proposing to acquire Ac.9-96 of the lands in question and other land of Ac.2-98 cents, totalling Ac.12-54 cents for the purpose of providing house sites to the Scheduled Castes/weaker sections, and dispensing with the enquiry under Section
5-A of the Act, by invoking the powers under Section 17(4) of the Act. Consequently, the first respondent also issued Notification under Section 6 of the Act on 27-02-2004 in respect of the said land. The petitioner states that while the lease granted to him by third respondent- Executive Officer of the M.S.N. Charities, is subsisting, without issuing any notice to him, the first respondent could not have issued the impugned Notifications seeking to acquire the land in question, which is under his cultivation. It is stated that there was no urgency for first respondent to dispense with the enquiry under Section 5-A of the Act, and in any case, he states that in the case of lands under his cultivation and while the request to drop the acquisition proceedings, made by the second respondent vide his proceedings letter dated 21-10-2003, is pending with the first respondent, enquiry under Section 5-A of the Act, cannot be dispensed with. Inasmuch as no opportunity whatsoever was provided to the petitioner to raise his objections, the petitioner states that the Notifications are liable to be set- aside on the ground of violation of principles of natural justice.

Hence, the writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Land Acquisition.

Insofar as the contention of the petitioner that first respondent could not have dispensed with the enquiry under Section 5-A of the Act, for there was no urgency, is concerned, it may be noticed that urgency of an acquisition is subject to the subjective satisfaction of the acquisition authority, and should be left to their discretion and decision, and it would not be proper on the part of the Court to go into the veracity or otherwise of the subjective satisfaction arrived at by the authority for invoking the emergency powers to dispense with the enquiry under Section 5-A of the Act, unless it is demonstrated that the decision to dispense with the enquiry had been taken without application of mind to the relevant factors.

The apex Court in **First Land Acquisition Collector vs. Nirodhi Prakash Gangoli**, while considering the question as to whether the Government was justified in invoking their powers under Section 17(1) and (4) of the Act to dispense with the enquiry under Section 5-A of the Act, held thus:

> "The question of urgency of an acquisition under Section 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter, when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Section 17(1) and (4) of the Act, and issues Notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant facts or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and the decision of the concerned authority. If an order invoking power under Section 17(4) is assailed, the Courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by non-application of mind."

The petitioner except making bald assertions that there is no urgency to dispense with the enquiry under Section 5-A of the Act, has not placed any material to prove that there was no urgency for dispensing with the enquiry under Section 5-A of the Act. On the other hand, it is his specific case that the land is being acquired to implement the policy of the Government, namely to provide house sites to Scheduled Castes/weaker sections. In the absence of any material produced by the petitioner to show that the first respondent is seeking to acquire the land under

cultivation of the petitioner, and has dispensed with the enquiry under Section 5-A of the Act, in spite of there being no urgency, no exception can be taken to the action of the first respondent in dispensing with the enquiry under Section 5-A of the Act for acquisition of the land in question, and more so when it is neither pleaded nor demonstrated by the petitioner that the decision to dispense with the enquiry under Section 5-A of the Act had been taken by the first respondent without applying his mind to the facts of the case.

The petitioner admittedly is a tenant of the third respondent-M.S.N.Charities, and he cannot claim to have better rights than what the third respondent has, and at best, he being in possession of the land belonging to the third respondent as tenant, and person interested in the land, can claim his share of compensation, which may be awarded by the Land Acquisition Officer for acquisition thereof. This aspect of the matter was considered by a learned single Judge of this Court in **B. Jagannayakulu vs. District Collector**, wherein he held thus:

"A tenant cannot have more rights than the owner. When the question of acquisition of land comes, if the owner cannot defeat the provisions of Land Acquisition Act can a tenant defeat such provisions? Under Section 11 of the Tenancy Act change of ownership in lands which are under tenants is possible. So, by issuing a notification under Section 4 of the Land Acquisition Act, the State has expressed its intention to take the lands into their own ownership. Under the Land Acquisition Act, State can become the owner of any property provided the property is taken for a public purpose and after following the procedure laid down by the Land Acquisition Act. Change of ownership is not barred under the A.P. Tenancy Act, therefore, State can become owner of the lands which are owned by landlords whether they are temples or private individuals. Once the land is taken in the ownership of the State, the A.P. Tenancy Act, 1956 becomes inoperative by virtue of Section 18 of the same Act. Section 18 of the Tenancy Act lays down that, nothing in the Tenancy Act shall apply to the lands owned by the State Government or the Central Government. Acquisition, per se, is not barred under the Tenancy Act. Change of ownership, is also not barred under the Tenancy Act. There cannot be any bar to the State Government to take the lands into its possession under the provisions of Land Acquisition Act which are in the possession of tenants at a particular point of time."

The petitioner being tenant of the third respondent and person interested in the land belonging to the third respondent by reason of his cultivation of the said land, can well seek his share of compensation that may be awarded by the Land Acquisition Officer in lieu of acquisition thereof, but he certainly cannot question the acquisition proceedings on mere technicalities.

It may be noticed that the lease in respect of the lands in question is subsisting between the petitioner and the third respondent and according to which, the petitioner would not be evicted therefrom till the expiry of lease period i.e. till the year 2005, but such lease having no statutory force, would not come in the way of

acquisition proceedings, which are initiated under the Land Acquisition Act, 1894, which is a special enactment, enacted for acquisition of land needed for public purposes. Apart from this, it may be noticed that the apex Court in **State of A.P. and Others vs. Nallamilli Rami Reddy and Others** had held that the tenancy laws would not be applicable in relation to lands belonging to a Charitable or an Endowment Institution. Therefore, the petitioner being a tenant, cannot seek to enforce the lease when the land, which is under his cultivation, and belonging to a Charitable Institution, namely, the third respondent, is sought to be acquired by the first respondent, for a public purpose, namely providing house sites to Scheduled castes/weaker sections of the society.

For the foregoing reasons, the writ petition is devoid of any merit, and the same is accordingly dismissed. No costs.

_____

N.V. RAMANA, J

Date: 29-6-2004

Svv

To

1 The Land Acquisition Officer-cum-District Collector, East Godavari District, Kakinada.
2 The Commissioner, Endowments, Tilak Road, Hyderabad.
3 The Asst. Commissioner Endowoments-cum-Executive Officer,
Sri M.S. Naicker Charities, Jagannaickpur,
Kakinada, East Godavari District.

4 Two CCs. to Govt. Pleader for Land Acquisition, High Court Buildings, A.P., Hyderabad (OUT)

5 Two CD copies.